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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/795,843	03/08/2004	Dilip K. Nakhasi	0803-0111	1274
26568 7590 09/25/2007 COOK, ALEX, MCFARRON, MANZO, CUMMINGS & MEHLER LTD SUITE 2850 200 WEST ADAMS STREET CHICAGO, IL 60606				
			EXAMINER PADEN, CAROLYN A	
			ART UNIT 1761	PAPER NUMBER
			MAIL DATE 09/25/2007	DELIVERY MODE PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/795,843	Applicant(s) NAKHASI ET AL.	
	Examiner Carolyn A. Paden	Art Unit 1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 11 September 2007.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-9, 11-13, 15-25, 27, 29, 35-37, 40, 41 and 43-48 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-9, 11-13, 15-25, 27, 29, 35-37, 40, 41 and 43-48 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                                | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                       | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

The final rejection of June 11, 2007 has been withdrawn in order for the amendment of September 11, 2007 to be entered. The prior rejection of the claims over Amerongen in view of Seiden as further evidenced by Yang and Swern has been withdrawn in response to applicants' amendments to the claims.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9, 11-13, 15-25, 27, 29, 35-37, 40, 41, 43-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takeuchi et al (6,835,408) as further evidenced by Swern (pages 54-55, 179-180 and 211) in view of Wester (6,589,588).

Takeuchi discloses an oil or fat composition used as cooking oil that is made by the transesterification of medium chain fatty acids with vegetable oils. The oils disclosed for transesterification are shown at column 5, lines 36-41 and the transesterification process are shown in the examples. The medium chain fatty acids are defined at column 3, lines 1-3 to have 6 to 12 carbon atoms. The cooking properties of the oil are shown

in Table 7. The oil is stated to result in low body fat accumulation (abstract). It is appreciated that the viscosity and smoke point of the lipid are not disclosed but viscosity and smoke point are inherent features of triglycerides. Swern is cited for evidence of viscosity, in the figure at page 180 and discussion on page 179, that triglycerides are known in the art to provide a viscosity of between 20 and 52 centipoise. The smoke point of triglycerides is shown on page 211 of Swern. Swern teaches that phytosterols esters are known components of edible oils at pages 54-55. Wheat germ oil is disclosed to contain phytosterols ester content that is within the range of the claims. Wheat germ oil is one of the edible oils mentioned in Takeuchi and it would have been obvious to select wheat germ oil for interesterification with medium chain triglyceride in order to enhance the phytosterols ester content of the oil composition. Wester is relied upon to show that incorporation of phytosterols esters into foods acts to lower the cholesterol of the body (column 1, lines 13-37). The concept of including phytosterols in cooking oils is specifically outlined at column 5, lines 35-37. It would have been obvious at the time of applicants' invention to prepare the oil of Takeuchi so that it is rich in phytosterols esters by selection of wheat germ oil. It would also be obvious to fortify an

alternative cooking oil of Takeuchi with the phytosterols ester of Wester in order to improve the healthy, cholesterol lowering effects of the oil. It is appreciated that the amount of phytosterols ester of claim 2 is not mentioned but fortifying edible oil with phytosterols ester would have been an obvious way to show the clinical effect of lowering cholesterol.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks, can be reached on (571) 272-1401 or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

*Carolyn Paden*  
CAROLYN PADEN 9-21-07  
PRIMARY EXAMINER 1761

The final rejection of June 11, 2007 has been withdrawn in order for the amendment of September 11, 2007 to be entered.

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-9, 11-13, 15-25, 27, 29, 35-37, 40, 41, 43-48 are rejected under 35 U.S.C. 103(a) as being unpatentable over Takeuchi et al (6,835,408) as further evidenced by Swern (page 179-180 and 211) in view of Wester (6,589,588).

Takeuchi discloses an oil or fat composition used as cooking oil that is made by the transesterification of medium chain fatty acids with vegetable oils. The oils disclosed for transesterification are shown at column 5, lines 36-41 and the transesterification process are shown in the examples. The medium chain fatty acids are defined at column 3, lines 1-3 to have 6 to 12 carbon atoms. The cooking properties of the oil are shown in Table 7. The oil is stated to result in low body fat accumulation (abstract). It is appreciated that the viscosity and smoke point of the lipid are not disclosed but viscosity and smoke point are inherent features of

triglycerides. Swern is cited for evidence of viscosity, in the figure at page 180 and discussion on page 179, that triglycerides are known in the art to provide a viscosity of between 20 and 52 centipoise. The smoke point of triglycerides is shown on page 211 of Swern. The claims appear to differ from Takeuchi in the recitation of the inclusion of a phytosterols ester component. Wester teaches that incorporation of phytosterols esters into foods acts to lower the cholesterol of the body (column 1, lines 13-37). The concept of including phytosterols in cooking oils is specifically outlined at column 5, lines 35-37. It would have been obvious at the time of applicants' invention to fortify the cooking oil of Takeuchi with the phytosterols ester of Wester in order to improve the healthy, cholesterol lowering effects of the oil. It is appreciated that the amount of phytosterols in the composition is not mentioned but the level of phytosterols ester would have been within the determination of one of ordinary skill in the art that desires liquid oil that also has the cholesterol lowering effect of phytosterols esters.

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE**



**FINAL.** See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Carolyn A Paden whose telephone number is (571) 272-1403. The examiner can normally be reached on Monday to Friday from 7 am to 3:30 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks, can be reached on (571) 272-1401

or by dialing 571-272-1700. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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CAROLYN PADEN 9-20-07  
PRIMARY EXAMINER  
GROUP 1300- 1761